



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: K-Son Construction Company

File: B-225207

Date: February 10, 1987

DIGEST

1. When a size status protest has been filed with the Small Business Administration (SBA) against a prospective awardee, the regulations permit the contracting officer to make award 10 days after SBA's receipt of the protest.
2. Where a protester initially files a timely protest and later supplements it with new and independent grounds of protest, the later-raised allegations must independently satisfy the General Accounting Office timeliness requirements.

DECISION

K-Son Construction Company (K-Son), protests the award of a contract to Pavex Corporation under invitation for bids (IFB) No. F02601-86-B-0055, a small business set-aside issued by the Department of the Air Force for repair of a taxiway at Davis-Monthan Air Force Base, Arizona. K-Son contends that it was improper for the Air Force to make award to Pavex while K-Son's small business size status protest against Pavex was pending with the Small Business Administration (SBA), and that, in any event, Pavex did not meet the IFB's experience requirements.

We dismiss the protest.

K-Son protested Pavex's small business size status to the Air Force on September 25, 1986. The Air Force forwarded that protest to the SBA on September 26, and the SBA acknowledged receipt of the protest on October 7. On October 24, the contracting officer awarded the contract to Pavex because more than 10 working days had passed since SBA's receipt of K-Son's size status protest--the regulations permit award in such case--and because the delay of award was hampering flying operations at the installation.

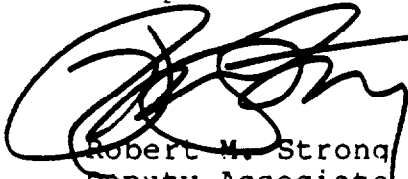
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On November 7, the SBA advised the Air Force that Pavex had been found to be a large business, and K-Son protested to our Office on November 14. Pavex filed an appeal of the SBA's size determination on November 26.

Under the Federal Acquisition Regulation (FAR), 48 C.F.R. § 19.302(h)(1) (1986), when a size status protest has been filed and forwarded to the SBA, a contracting officer may not make an award until the SBA Regional Administrator resolves the matter or until 10 working days after the SBA's receipt of the protest, whichever occurs first. Here, the SBA acknowledged receipt of K-Son's protest on October 7, and the Air Force did not award the contract to Pavex until October 24, more than 10 working days thereafter. Since the contracting officer's actions were consistent with the FAR, we have no legal basis to object to the award. See JRR Construction Co., Inc., B-220592, Oct. 4, 1985, 85-2 C.P.D. ¶ 383. We point out that where the SBA does not find a protested firm large until after an otherwise proper award, the SBA decision does not apply to the acquisition. Longview Construction Co., B-222519, Apr. 25, 1986, 86-1 C.P.D. ¶ 408.

K-Son also alleges in its December 30 comments on the Air Force's protest report that it is evident from Pavex's November 26 appeal to the SBA that Pavex did not meet the experience requirements for the solicitation. This issue is untimely, however. Our Bid Protest Regulations require that a protest based on other than alleged solicitation improprieties be filed not later than 10 working days after the basis for protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1986). Further, where a protester initially files a timely protest and later supplements it with new and independent grounds of protest, the later-raised allegations must independently satisfy these timeliness requirements. Arndt & Arndt, B-223473, Sept. 16, 1986, 86-2 C.P.D. ¶ 307. Pavex filed its appeal to the SBA, with a copy to K-Son, on November 26. K-Son did not raise this issue with our Office until December 30, clearly more than 10 working days after it knew the new basis for protest.

The protest is dismissed.



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